

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA

|                           |   |                        |
|---------------------------|---|------------------------|
| UNITED STATES OF AMERICA, | ) |                        |
|                           | ) |                        |
| vs.                       | ) | No. EV 98-33-CR-07-Y/H |
|                           | ) | 3:06-cv-13-RLY-WGH     |
| WAYNE MARSHAL HARE,       | ) |                        |
|                           | ) |                        |
| Defendant.                | ) |                        |

**Entry Concerning Selected Matters**

The court, having considered the above action and the matters which are pending, makes the following rulings:

1. Mr. Hare has filed a timely notice of appeal from the denial of his motion for relief pursuant to 28 U.S.C. § 2255. His notice of appeal is also treated as his request for a certificate of appealability.

a. "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 123 S. Ct. 1029, 1034 (2003).


b. There are no circumstances discernible from the pleadings or the record which satisfy these grounds. For the reasons which accompanied the dismissal of the action in the Entry of January 20, 2006, therefore, Mr. Hare's application for the issuance of a certificate of appealability is **denied**.

2. The defendant seeks leave to proceed on appeal without prepayment of the appellate fees of \$255.00. An appeal may not be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915; see *Coppedge v. United States*, 369 U.S. 438, 82 S. Ct. 917 (1962). "Good faith" within the meaning of § 1915 must be judged by an objective, not a subjective, standard. See *Id.* There is no objectively reasonable argument which the defendant could present to argue that the disposition of this action was erroneous. In addition, his request for the issuance of a certificate of appealability has been denied. In pursuing an appeal, therefore, the defendant

"is acting in bad faith . . . [because] to sue in bad faith means merely to sue on the basis of a frivolous claim, which is to say a claim that no reasonable person could suppose to have any merit." *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000). Accordingly, his appeal is not taken in good faith, and for this reason his request for leave to proceed on appeal *in forma pauperis* is **denied**.

**IT IS SO ORDERED.**

Date: 03/31/2006

  
RICHARD L. YOUNG, JUDGE  
United States District Court  
Southern District of Indiana

Distribution:

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